

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)
)
Plaintiff,)
)
v.) C.A. No.: 04-1496
)
RICHARDS PAVING, INC.)
)
Defendant.)

**PLAINTIFF'S APPENDIX IN SUPPORT OF PLAINTIFF'S ANSWERING BRIEF IN
OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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DATED: August 18, 2006

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)
)
Plaintiff,)
)
v.) C.A. No.: 04-1469
)
RICHARDS PAVING, INC., a Delaware)
Corporation)
)
Defendant.)

AMENDED COMPLAINT**THE PARTIES**

1. The plaintiff, Stanford L. Burris (hereinafter referred to as "Burris"), is a resident of the State of Delaware, residing in New Castle County.
2. The defendant, Richards Paving, Inc., is a corporation organized and existing under the laws of the State of Delaware, whose agent for service of process is S.D.M. Robinson Corporate Agents, Inc., 910 Foulk Road, Suite 200, Wilmington, DE 19803.
3. At all times relevant, Richards Paving, continually did, and now has fifteen (15) or more employees for each working day of the twenty (20) or more calendar weeks in the current or preceding calendar year.
4. At all times relevant, Richards Paving, has continually been engaged in an industry affecting commerce, within the meaning of the ADA, §101(5), 42 U.S.C. §12111(5), and ADA, §107(a), 42 U.S.C. §11217(a), which incorporates by reference §701(g)-(h) of Title VII, 42 U.S.C. §§2000e(g)(h).
5. At all times relevant, Richards Paving, has been a covered entity under the ADA §101(2), 42 U.S.C. §12111(2).

JURISDICTION AND VENUE

6. This Court has jurisdiction over the "Americans With Disabilities Act" claims pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343. This Court has jurisdiction over ancillary matters pursuant to 28 U.S.C. §1367.

7. This action is authorized and instituted pursuant to §107(a) of the "Americans With Disabilities Act" of 1990 ("ADA") (42 U.S.C. §12101 et. seq, which incorporates by reference §706(f)(1) & (3) of the Civil Rights Act of 1964 ("Title VII"), and 42 U.S.C. §§2000e-5(f)(1)(3), and pursuant to §102 of the Civil Rights Act of 1991, 42 U.S.C. §1981(a).

8. Venue for all causes of action stated herein lies in the District of Delaware, under 28 U.S.C. §1331, and the acts alleged as the basis for these actions took place within the boundaries of this district, although facts relevant to these proceedings may have also taken place in the State of Maine.

PREREQUISITES

9. The plaintiff, Stanford Burris, has met the prerequisites for filing suit under the ADA. On May 9, 2003, Burris filed a charge "The Charge" simultaneously with the Delaware Department of Labor and the Equal Employment Opportunity Commission, alleging that he had been discriminated against in violation of Title I of the ADA. (A copy of that charge is attached hereto as Exhibit No. 1)

10. On April 30, 2004, the Delaware Department of Labor issued a "Notice of Reasonable Cause Finding", stating that there was reasonable cause to believe that there was a violation. (A copy is attached hereto as Exhibit No. 2)

11. On August 27, 2004, the Equal Employment Opportunity Commission issued a "Notice of Right to Sue" based upon the request of the plaintiff. (A copy of that notice is attached hereto as Exhibit No. 3).

12. The plaintiff has filed this suit within 90 days of the receipt of his "Notice of Right to Sue" having received such notice on or about August 30, 2004, and this suit having been originally filed on November 24, 2004.

FACTUAL ALLEGATIONS

13. The plaintiff applied for a position as a truck driver with the defendant on or about April 3, 2003.

14. As a result of that application the plaintiff was interviewed by employees of the defendant.

15. On May 5, 2003, as a part of the process to apply for a position, the plaintiff was given a road test, which he passed.

16. After passing his road test, the defendant's employee representatives asked the plaintiff for a copy of his driving record.

17. On May 6, 2003, when the plaintiff delivered a copy of his driving record to the defendant, he was told he would not be hired, because of the defendant's perception that the plaintiff could not communicate with the offices of the defendant while operating the defendant's trucks, through the use of a CB radio or a cell phone.

18. At all relevant times the plaintiff would have been capable, with or without reasonable accommodation to perform the essential function of the position of truck driver.

19. The plaintiff was substantially limited in the major life function of breathing because of injuries to his larynx, which also prevents him from talking in a normal fashion.

20. Prior to applying for a position with the defendant, the plaintiff had previously been employed as a truck driver, and had been able to communicate with truck dispatchers through the use of a CB radio and/or cell phone.

21. As a direct and proximate result of the actions of the defendant in denying employment to the plaintiff, the plaintiff has suffered significant financial losses, including, but not limited an earned income.

22. As further and direct proximate result of the defendant's discriminatory conduct, the plaintiff has suffered severe emotional distress, humiliation, emotional pain and suffering, mental anguish and other non-pecuniary losses.

23. The actions of the defendant in failing to hire the plaintiff and/or to make necessary and reasonable accommodation for the plaintiff's disability, were in violation of the "Americans With Disabilities Act", 42 U.S.C. §12112(b)(5)(a).

24. The actions of the defendant in failing to hire the plaintiff were based upon the defendant's discrimination of the plaintiff, because the plaintiff has a disability, the plaintiff is was regarded as being disabled, and/or the plaintiff's record of having a disability, all of which were discriminatory in nature.

25. At all times herein the actions of the defendant have been committed in bad faith.

26. The defendant, by its actions, willfully, maliciously and intentionally with reckless indifference discriminated against the plaintiff in violation of the "Americans With Disabilities Act", 42 U.S.C. §11212, and in doing so is subject to punitive damages.

WHEREFORE, the plaintiff requests this Court to award the following:

a. Award both past lost wages and future lost wages, constituting such damages as the Court deems appropriate.

b. Direct the defendant to pay plaintiff reasonable sums of money to compensate the plaintiff for his pain and suffering.

c. Direct the defendant to pay the plaintiff reasonable sums as punitive and exemplary damages.

d. Award the plaintiff his attorney fees, litigation expenses, and all reasonable Court costs.

e. Award injunctive and equitable relief in the form of an order directing the defendant to hire the plaintiff, as well as front pay.

f. Such other and further relief as this Court deems just and appropriate.

ABER, GOLDLUST, BAKER & OVER

/s/ Gary W. Aber

GARY W. ABER (DSB #754)
702 King Street, Suite 600
P.O. Box 1675
Wilmington, DE 19899
(302) 472-4900
Attorney for Plaintiff

DATED: September 7, 2005

FOR THE DISTRICT OF DELAWARE

Stanford L. Burris :
Plaintiff, :
v. : Civ. No. 04-1469-SLR
Richards Paving, Inc. :
Defendant :
:

ANSWER OF DEFENDANT RICHARDS PAVING, INC.,
TO PLAINTIFF'S AMENDED COMPLAINT

1. Upon information and belief, admitted.
2. Upon information and belief, admitted.
3. Upon information and belief, admitted.
4. Upon information and belief, admitted.
5. Upon information and belief, admitted.
6. Upon information and belief, admitted.
7. Upon information and belief, admitted.
8. Upon information and belief, admitted.
9. Upon information and belief, admitted.
10. Upon information and belief, admitted.
11. Upon information and belief, admitted.
12. Upon information and belief, admitted.
13. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.

14. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
15. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
16. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
17. Denied.
18. Denied.
19. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
20. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
21. Defendant is without knowledge or information sufficient to form a belief as to the truth of this averment.
22. Denied.
23. Denied.
24. Denied.
25. Denied.
26. Denied.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

27. The Complaint fails to state a claim upon which relief can be granted

SECOND AFFIRMATIVE DEFENSE

28. Plaintiff failed to mitigate his damages.

THIRD AFFIRMATIVE DEFENSE

29. Plaintiffs' claims are barred, in whole or in part, by the doctrines of laches, estoppel and waiver.

FOURTH AFFIRMATIVE DEFENSE

30. Plaintiffs' complaint fails to state a claim of disability discrimination.

FIFTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims are barred, in whole or in part, by the doctrine of statute of limitations.

SIXTH AFFIRMATIVE DEFENSE

32. Pursuant to 42. U.S.C. § 12113(a), plaintiff was not hired by Richards Paving for job related reasons and consistent with business necessity.

SEVENTH AFFIRMATIVE DEFENSE

33. Pursuant to 42 U.S.C. §12113(b), plaintiff posed a direct threat to the health and safety of other individuals in the workplace.

WHEREFORE defendant Richards Paving, Inc., demands that this case be

dismissed with prejudice.

**ELZUFON AUSTIN REARDON
TARLOV & MONDELL, P.A.**

/s/ Matthew P. Donelson
Matthew P. Donelson, Esquire
Del ID # 4243
300 Delaware Avenue, Suite 1700
P.O. Box 1630
Wilmington, DE 19899-1630
(302) 428-3181
Attorney for Defendant
Richards Paving, Inc.

DATED: 09/29/05

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974

ENTER CHARGE NUMBER

FEPA 06031071
 EEOC 17CA300419

Delaware Department of Labor

and EEOC

(State, or local Agency, if any)

| | |
|---|--|
| NAME (Indicate Mr., Mrs., Ms) Stanford L. Burris | HOME TELEPHONE NO. (Include Area Code) (302) 658-2706 |
|---|--|

| | | |
|---|--------------------------|--------|
| STREET ADDRESS 88 Karlyn Dr. New Castle DE 19720 NCC | CITY, STATE AND ZIP CODE | COUNTY |
|---|--------------------------|--------|

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one, list below.)

| | | |
|-----------------------------|------------------------------------|--|
| NAME Richard Paving Inc. | NO. OF EMPLOYEES OR MEMBERS 20+ | TELEPHONE NUMBER (Incl. Area Code) 302-328-5828 |
|-----------------------------|------------------------------------|--|

| | |
|---|--------------------------|
| STREET ADDRESS 9 Bellecor Dr. New Castle, DE 19720 | CITY, STATE AND ZIP CODE |
|---|--------------------------|

| | |
|------|--------------------------------------|
| NAME | TELEPHONE NUMBER (Include Area Code) |
|------|--------------------------------------|

| | |
|----------------|--------------------------|
| STREET ADDRESS | CITY, STATE AND ZIP CODE |
|----------------|--------------------------|

| | |
|---|--|
| <input type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input type="checkbox"/> NATIONAL ORIGIN <input type="checkbox"/> AGE <input type="checkbox"/> RETALIATION <input checked="" type="checkbox"/> DISABILITY <input type="checkbox"/> OTHER (Specify) | DATE DISCRIMINATION TOOK PLACE EARLIEST 4/3/2003 LATEST 5/6/2003 <input type="checkbox"/> CONTINUING ACTION |
|---|--|

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s):

I applied for a truck driving position on or about 4/3/03 with the Respondent. I am an individual with a disability who is able to perform the essential functions of the position with reasonable accommodation. I went to see the Respondent on 5/5/03 to inquire whether the position was still available. I spoke to Dave McLaskley, Foreman and he gave me a road test. I passed the road test and then Mr. McLaskley asked for my driving record. I returned on 5/6/03, with a copy of my driving record but was told that he could not hire me because of my voice. Mr. McLaskley stated that I would not be able to be heard over the CB radio. I mentioned that I could use a cell phone to communicate and I could use my artificial larynx (which I showed him) but Mr. McLaskley refused. Lastly, I asked Mr. McLaskley if I could be placed in a laborer position but he told me that couldn't be done because he needed truck drivers.

I believe that I have been discriminated against in violation of the Americans with Disabilities Act of 1991, as amended and the Delaware Handicapped Persons in Employment Act based on my disability because: I was not hired for a position for which I was qualified clearly based on my disability. Mr. McLaskley refused to provide me reasonable accommodation and therefore, refused me a position for which I could perform.

| | |
|---|--------------------------|
| <input checked="" type="checkbox"/> I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. | SIGNATURE OF COMPLAINANT |
|---|--------------------------|

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Stanford L. Burris

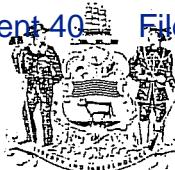
Date 5/9/03

Charging Party (Signature)

NOTARY - (When necessary to meet State and Local Requirements)

Subscribed and sworn to before me this date

(Day, month, and year)



STATE OF DELAWARE
DEPARTMENT OF LABOR
DIVISION OF INDUSTRIAL AFFAIRS
4425 NORTH MARKET STREET
WILMINGTON, DELAWARE 19802

TELEPHONE (302) 761-8200
FAX (302) 761-6601

NOTICE OF REASONABLE CAUSE FINDING

RE: Burris v. Richards Paving Inc.

State Case No.: 03061071

On May 9, 2003, Mr. Stanford Burris filed a Charge of Discrimination against Richards Paving, Inc. The Charge of Discrimination is hereby incorporated by reference.

Reasonable Cause Finding:

On April 30, 2004, the Department of Labor concluded its investigation and now finds, based on the following facts, that there is reasonable cause to believe that a violation of the State Discrimination Act has occurred.

I. Undisputed Facts:

1. Charging Party applied for a Truck Driver position with Respondent on or about 04/03/03.
2. Respondent had an interview with Charging Party where the interviewer and Charging Party attempted to communicate using both a CB radio and a cell phone in an attempt to find a reasonable accommodation to Charging Party's disability.
3. Respondent did not hire Charging Party for this position.

II. Disputed Facts:

1. Charging Party states that the representative of Respondent stated Charging Party was not being hired because of his voice. Respondent further stated that Charging Party could not be heard over the CB radio and therefore could not be hired as a Truck Driver.
2. Respondent claims that attempts were made at the interview to communicate with Charging Party over the CB radio and cell phone and were unsuccessful.
3. Respondent states that there were no accommodations that could have been made for Charging Party and of those accommodations, which could have been a possibility, they would have caused Respondent an undue hardship.

III. Resolution of Material Facts in Dispute:

1. Charging Party has currently been employed by a trucking company for a period of 6 months where he used and communicated with a CB radio successfully.

2. Respondent was unable to demonstrate that there are no accommodations that could have been made.
3. Respondent failed to provide evidence that the reasonable accommodations that could have been utilized would have caused an undue hardship.
4. Respondent corroborated that in their business there is a limited amount of deliveries of their products that are delivered without complications and that these deliveries could be delivered by Charging Party.

IV. Resolution:

1. Charging Party met his burden of showing that he was discriminated against based on his disability.

The Charge of Discrimination, State Case No. 03061071 will be administratively processed and assigned to a conciliation officer in an effort to administratively resolve the complaint pursuant to 19 Del. C. Section 712(c).

7/30/04
DATE

M. Shelton
MELINDA SHELTON
INVESTIGATOR
LABOR LAW ENFORCEMENT OFFICER

4/30/04
DATE

J. Cutler
JULIE CUTLER
LABOR LAW ENFORCEMENT SUPERVISOR

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

Stanford L. Burris :
Plaintiff, :
v. : C.A. No.
Richards Paving, Inc. : 04-1469-SLR
Defendant. :
:

Deposition of STANFORD L. BURRIS,
taken pursuant to notice before Adam D. Miller,
Registered Professional Reporter and Certified
Shorthand Reporter, in the law offices of Elzufon
Austin Reardon Tarlov & Mondell, P.A., 300 Delaware
Avenue, Suite 1700, Wilmington, Delaware, on
Wednesday, June 14, 2006, beginning at approximately
9:57 a.m., there being present:

APPEARANCES:

ABER, GOLDLUST, BAKER & OVER
One Customs House, Suite 600
702 King Street
P.O. Box 1675
Wilmington, Delaware 19899-1675
BY: GARY W. ABER, ESQUIRE
Attorney for Plaintiff

CORBETT & WILCOX
Registered Professional Reporters
230 North Market Street Wilmington, DE 19801
(302) 571-0510
www.corbettreporting.com

1 for a building: sand, stone, blacktop, so on.

2 Q. Sir, do you have a current CDL license?

3 A. Yes, I do.

4 Q. Do you have it with you right now?

5 A. No, I don't.

6 Q. How often do you have to get that renewed?

7 A. Every seven years -- every five years.

8 Scratch that. I can't remember off the top of my
9 head right now.

10 Q. Do you remember the last time you got it
11 renewed?

12 A. I think it was 2002, I think.

13 Q. When you go to get it renewed, do you have
14 to take another test to get it passed?

15 A. If I'm getting another qualification, I
16 do.

17 Q. What if you're not getting another
18 qualification?

19 A. No.

20 Q. Then you don't have to take any other
21 additional tests?

22 A. I did take a test for bus driver.

23 Q. When was that?

24 A. 2003.

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1 Q. Did you pass that test?

2 A. Yes.

3 Q. When did you first get your CDL license?

4 A. I'm 64. I think I got it when I was 21, I
5 think, so do the math. I can't think.

6 Q. So you've roughly had it for about 20
7 years? You've roughly had your CDL license for about
8 20 years?

9 A. I'm 64; 40-some years.

10 Q. I'm sorry. My math is bad. That's why
11 I'm an attorney.

12 A. Mine's terrible. I didn't even want to
13 try to count it.

14 Q. Sir, I'm going to turn your attention to
15 your application for employment with Richards Paving.

16 A. Refresh me. That was almost three years.
17 I can't remember.

18 Q. I'm going to ask you the questions, so you
19 just answer me to the best of your recollection.

20 A. Okay.

21 Q. Do you recall applying for a job with
22 Richards Paving?

23 A. Yes.

24 Q. How many times have you applied for a job

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1 interviewed that same day.

2 Q. So just so I'm clear, you went in to fill
3 the application out, and you had the interview on
4 that same day as well?

5 A. To the best of my knowledge.

6 Q. The secretary who gave you the
7 application, do you recall her name?

8 A. No, I do not.

9 Q. Do you recall what she looked like?

10 A. She was a Caucasian lady, I'd say
11 approximately in her mid 20s or early 30s, I think,
12 to the best of my knowledge.

13 Q. Did you give the application back to her
14 on that day?

15 A. No. She took it. To my -- as I said -- I
16 mean, I'm trying to remember. I think she took it.
17 She told me to have a seat. To the best of my
18 knowledge, I believe she took it and -- to somebody
19 to, to look at.

20 Q. You testified that you believe you were
21 interviewed that day. Do you recall who you met with
22 on that day?

23 A. I believe it was a guy named Dave.

24 Q. And what do you mean by "interviewed"?

1 What did you do during the interview process?

2 A. He sat down and looked over my
3 application, and he said he was going to road-test
4 me.

5 Q. Did he ask you any questions at that time?

6 A. I don't remember.

7 Q. I understand you carry an electronic, what
8 I'm going to term as an electronic voice box?

9 A. (Indicating.)

10 Q. No?

11 A. No, sir. I didn't have it that day.

12 Q. Okay. I'm going to get back to that, but
13 I do understand that you have one; is that correct?

14 A. Yes, I do -- I did have one.

15 Q. You no longer use -- have one?

16 A. I've not used it, actually, since '91 or
17 '92.

18 Q. I understand you had your surgery to
19 remove the larynx in 1991; is that correct?

20 A. That's correct.

21 Q. So would I be correct in saying that you,
22 since 1991 or 1992, you have not used what I'll term
23 the electronic voice box?

24 A. That's correct.

1 with your voice?

2 A. Sure, it do. I have an opening in my
3 neck. I'd drown if I tried to swim.

4 Q. So what do you mean when you say "yes,"
5 you consider yourself --

6 A. I'm sorry. Is there anything that we can
7 do -- I try not to think about this. Please let's
8 move on to something else, because it really does
9 upset me because I don't like the way I sound. I
10 don't like what happened. Please. I get emotional.
11 Because of all the trouble I went through, I don't
12 want to -- I really don't want to talk about it.

13 Q. Well, sir, I have to ask you these
14 questions. And, believe me, I'm not trying to upset
15 you, but I need to ask you these questions.

16 When you said "yes," how do you
17 consider yourself disabled, other than you can't
18 swim?

19 A. I said "yes and no."

20 Q. What do you mean by when you say "yes"?

21 A. Yes, I can't do everything that a normal
22 person do. Some words I can't pronounce as good as
23 other people. And I said "no" because any type of
24 work, I can do.

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1 Q. Sir, work-wise, you don't consider
2 yourself disabled?

3 A. Well, I don't. But a lot of the employers
4 consider me as disabled. The facts on this case --
5 when the, the personnel from, from Richards said that
6 they couldn't use me because of my voice -- answers
7 the question right there.

8 Q. You said other -- you said you don't
9 consider yourself disabled, but other, I guess,
10 employees or employers do. What other employers have
11 considered you disabled?

12 A. I can't even name them because I have been
13 filling applications and applying to jobs; maybe
14 somebody would hire me. I'd start talking, and that
15 would be it.

16 Q. Do you have any specific names of certain
17 companies that you've applied to and believe they
18 haven't hired you because of your voice?

19 A. You got evidence right in your records.
20 Richards said -- the defendant said that they can't
21 use me because of my voice.

22 Q. I understand you're saying Richards. Is
23 there any other companies that you can recall that
24 have --

1 A. Not that have just come out and said, "I
2 can't use you because of your voice." They just say
3 that the job's no longer available.

4 Q. Let's talk about the interview process.
5 How long were you interviewed by Mr. Dave Moluski?

6 A. I don't remember exactly how long.

7 Q. You don't know how long the interview
8 process was. What did you do during the interview
9 process?

10 A. I answered all the questions that he asked
11 me. But I don't remember what the questions were
12 right now.

13 Q. You said you took a driving test. Do you
14 recall that?

15 A. Yes.

16 Q. How long -- how far did you drive; do you
17 recall?

18 A. I don't remember everything. I'd say
19 maybe about five to ten miles.

20 Q. What type of vehicle were you doing your
21 driving test in?

22 A. A Mack Truck.

23 Q. You'll have to forgive my ignorance. Is
24 that like a dump truck? Is that like a pickup truck?

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1 A. It's a Mack dump truck, a ten-wheeler.

2 Q. Have you driven that type of truck before?

3 A. Yes, I have.

4 Q. Prior to this interview process, when was
5 the last time you drove a ten-wheeler Mack Truck?

6 A. Probably when I worked for Rocky Paving
7 Company. But also I pulled a trailer with equipment
8 on it when I worked for Rocky. But I had to back the
9 trailer, the truck and trailer into driveways, into
10 alleys.

11 Q. During your driving test, did Mr. Moluski
12 have a certain route for you to take or did he just
13 tell you to drive the truck?

14 A. Yeah. He told me -- I think we, I think
15 we went, we went to 141 and made that circle and came
16 back to the plant, as far as I remember.

17 Q. Was anybody else in the vehicle besides
18 you and Mr. Moluski?

19 A. That's only three seats in there.

20 Q. During the driving test while you were out
21 on the road, did you have any conversation with
22 Mr. Moluski?

23 A. Not really. I just asked him which, which
24 way he wanted me to go, the route that he wanted me

1 to take.

2 Q. Now, this ten-wheeler truck, I presume
3 that's a standard shift?

4 A. Yeah. I think it's a "maxi nine." I
5 think it's -- to my knowledge, I think it only had a
6 high and low in it.

7 Q. Did you have to use the radio during the
8 driving test?

9 A. No. I wasn't asked to use the radio. As
10 a matter of fact, that truck didn't have a radio in
11 it or a CB -- that I can remember. But I was never
12 asked to speak on a CB.

13 Q. When you got back to the facility, what
14 happened next?

15 A. He told me that, that my -- the road test
16 was successful and that he needed to see a copy of my
17 driving record.

18 Q. Did you have that with you at the time?

19 A. No, I didn't.

20 Q. Did he ask you for any other documents
21 besides your driving record?

22 A. Well, I think he looked at -- if I'm
23 correct, I think he asked for -- I don't remember for
24 sure -- but he might have asked me if I had, if I had

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1 my certification for DOT.

2 Q. Did you have that with you as well?

3 A. Yes, I did. But I don't know if he ever
4 asked me for that or not. I can't remember that.

5 Q. Did you ever give him a copy of the
6 certification that you had?

7 A. I can't remember. I don't believe that he
8 ever asked for the, for a copy.

9 Q. What happened after you -- after he asked
10 you for a copy of your driving record?

11 A. Well, I, I went to the Department of Motor
12 Vehicles so I could have one printed. I came back
13 the next morning with it. That's when he was telling
14 me that he couldn't use me because of my voice.

15 Q. Did Mr. Moluski ask you to come back the
16 next morning?

17 A. Yes; because he said he wanted to see a
18 copy of my driving record.

19 Q. Were there any other people around while
20 you and Mr. Moluski were having this discussion?

21 A. Not that I can remember.

22 Q. Where was -- you don't recall where this
23 discussion was taking place? I understand it was a
24 plant. But was it in a particular part of --

1 A. I think it was in his office, I believe,
2 to the best of my knowledge.

3 Wait a minute. Wait a minute. I
4 believe it was on the outside, because he was
5 interviewing another -- there was somebody else there
6 that he was talking to. And this guy was -- he was
7 way across the other side of the yard at the time.

8 I think he told me that at the yard,
9 standing outside. I believe that's where it was at.
10 Because we did have a conversation on the outside.
11 Or maybe that's when I was begging him for the job.
12 I'm not sure.

13 Q. You said you were begging him for the job.
14 What do you mean by that?

15 A. Well, after he told me that he couldn't
16 use me because of my voice, when I asked him, I said,
17 Well, if, if you can just hire me, just give me any
18 kind of job. I'll take any kind of work.

19 And he said no.

20 But I -- that's when, that's when the
21 cell phone and the electric larynx came up, because,
22 like I said, I would have done anything to try to get
23 that job because it paid pretty good and it was
24 almost steady work.

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1 Q. I want to backtrack for a second, because
2 I'm getting a little confused between -- was this on
3 the first day or the second day that you had this
4 conversation?

5 A. This was on second day, the conversation
6 about the, he didn't tell me that until after I went
7 to the Department of Motor Vehicles, that he couldn't
8 use me because of my voice.

9 That's when we got into a conversation
10 about the, about I could bring my larynx or -- my
11 electric larynx or the cell phone. But he said no,
12 he didn't want either one of them.

13 Q. I understand that, and I'm going to get
14 into that. And I want to just keep the chronology
15 straight. I understand that you went for an
16 interview; you took the road test. On that first
17 day, where were you speaking with Mr. Moluski when
18 you had the discussion about the driving record and
19 your certification?

20 A. This was after we came back. I don't, I
21 don't really believe that he asked me for my
22 certification. I don't believe. I'm not sure.

23 Q. But you believe he asked you for your
24 driving record?

1 time, the second application -- strike that.

2 We're talking about the current time,
3 in 2003. I understand that you came back the next
4 day after you took the road test and did the
5 interview?

6 A. (The witness shook his head.)

7 Q. No? Why don't you tell me what happened.

8 A. The interview was that day, the first day.

9 Q. Correct.

10 A. And the driving test was the first day.

11 Q. Correct.

12 A. When he told me to get -- he wanted to see
13 the driving record. I did not have a copy of the
14 driving record with me. I had to go into the DMV the
15 next day to get a copy.

16 I returned with the copy. And before
17 he even looked at the copy, he said, "I can't use you
18 because of your voice."

19 Q. What time did you go to the DMV?

20 A. I went the next day. I don't remember.

21 Q. What time did you get to Richards Paving?

22 A. I don't remember. I know it was during
23 the day.

24 Q. Do you believe it was in the afternoon or

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1 seemed like we were outside, just me and him. And
2 when he told me that, I don't know if I went in or
3 not. But I remember him saying to me he couldn't use
4 me because of my voice.

5 Q. At any time on the second day did he ask
6 you to use the radio or the CB?

7 A. No, not to the best of my knowledge.

8 Q. So tell me what happened up until you left
9 Richards Paving.

10 A. Well, I called back three or four
11 different times, but he never would come to the
12 phone.

13 Q. At some point in that second meeting, I
14 understand that you said that the issue of your voice
15 came up. Who brought that issue up?

16 A. Dave is the one that said -- when I came
17 back with the, with my driving record from DMV,
18 that's when he told me that he couldn't use me; he
19 couldn't hire me because of my voice. He didn't
20 think that I could be -- it would be clear enough
21 over the CB.

22 Q. And what did you say to him?

23 A. That's when I told him that I could use my
24 electric larynx or my cell phone to communicate. And

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1 he said no, that's not acceptable.

2 Q. At either the first or second day you met
3 with Dave Moluski, did you have your electric larynx
4 with you?

5 A. No, I did not.

6 Q. Any other discussions between you and Dave
7 on that second day?

8 A. Yeah. I told him that, that I needed a
9 job, because I was about to lose my house and all my
10 bills were behind. And I needed a job and I would
11 work as a laborer or any capacity that he had open, I
12 would take it. I didn't have to drive a truck.

13 Q. Was that the last time you had any
14 discussions with Dave Moluski?

15 A. Yeah, personally, because every time I
16 would call after that, they would say he was either
17 out of the office or he was on the phone.

18 Q. On that second day when you had your
19 driving record with you, did you actually give that
20 to him or did he accept that from you?

21 A. I'm not sure. I think he did. I'm not
22 sure.

23 Q. Sir, other than speaking, does your larynx
24 cause you any other problems?

1 A. (Indicating.)

2 Q. Do you have any other problems stemming
3 from your larynx other than your soft speech?

4 A. That's all I can think of.

5 Q. Between the interview you had with
6 Richards Paving and your current job with Daisy
7 Construction, have you held any other jobs since
8 then?

9 A. No.

10 Q. No? Okay. Sir, I'm just going to show
11 you your Answers to Interrogatories. I'm going to
12 ask if that is your signature on this page.

13 A. Yeah, to the best -- yes.

14 Q. And did you review your Answers to
15 Interrogatories before you signed them?

16 A. Some of them.

17 Q. But not all of them?

18 A. I think I did. I'm not sure. It's been a
19 while back.

20 Q. Okay. And your Answers to
21 Interrogatories, you answered them to the best of
22 your ability and knowledge?

23 A. Yes. Yes, to the best of my knowledge.

24 Q. Prior to today's deposition, did you do

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1 referring to this litigation?

2 A. Yes.

3 (Discussion held off the record.)

4 BY MR. DONELSON:

5 Q. Sir, I just want to clear up something as
6 far as your CDL license. I understand that you got
7 it when you were 24 years old --

8 A. (The witness shook his head.)

9 Q. No?

10 A. 21.

11 Q. 21 years old. My apologies.

12 -- and that the State of Delaware does
13 not require you to take a driving test for each
14 renewal; is that correct?

15 A. It all depends what I'm certified for. I
16 first got certified for driving a tractor-trailer.
17 That's what I first started driving. And dump truck,
18 I wasn't, I didn't have to be, take any of the
19 written tests for the Department of Motor Vehicles.

20 But when I went to get endorsed for a
21 bus driver for a school bus or a charter bus, I had
22 to have a driving test.

23 And I tried, when I was off this
24 winter, I applied to a company called Wally Trucking

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1 Company in New Jersey. I had to take a road test in
2 a tractor-trailer, which I passed.

3 Q. Sir, you referenced earlier your cell
4 phone, that you sometimes use that to communicate; is
5 that correct?

6 A. I use it all the time to communicate with
7 somebody. If you're not in front of me, if you're
8 sitting there, then I don't call.

9 Q. Do you have a -- what type of cell phone
10 is it?

11 A. It's a regular cell phone.

12 Q. You'll have to pardon my ignorance. Do
13 you have your cell phone with you?

14 A. Yes, I do. It's just a regular cell
15 phone. What's your office number?

16 Q. So you would call the person that you're
17 trying to get ahold of?

18 A. And they would call me.

19 (Discussion held off the record.)

20 BY MR. DONELSON:

21 Q. Sir, I understand from your Answers to
22 Interrogatories that you've taken the test and been
23 examined for DOT certification in New Jersey; is that
24 correct?

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1 A. Yes.

2 Q. Have you received the results of that?

3 A. I have my wallet with me. I do have, I do
4 have the copy that I got from -- no, I don't, I never
5 got it, because I didn't work for the company but one
6 day.

7 Q. Do you know whether you passed that
8 certification?

9 A. Yes, I passed it, because I worked one
10 day.

11 I'll add one more thing. I've never
12 flunked a driving test.

13 Q. Just a couple quick questions. Going back
14 to the second day that you went back to Richards
15 Paving, did you have any conversation with the
16 receptionist or secretary, other than to ask for
17 Mr. Moluski?

18 A. I don't remember.

19 Q. Approximately how long do you believe you
20 were there on that second day at Richards Paving?

21 A. Not long.

22 Q. When you say "not long," would it have
23 been half an hour? less than half an hour? more than
24 a half hour?

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1 about this incident?

2 A. I might have. I don't remember.

3 Q. Do you recall who you might have spoken
4 to?

5 A. No, I don't remember. If you want to
6 know, my -- I was really bruised because it started,
7 it brought me back to the realization that I was
8 different from everybody else.

9 When he said he couldn't use me,
10 couldn't hire me because of my voice, really, it
11 really floored me, because I was feeling good; but he
12 brought me, he just crashed my world when he said he
13 couldn't hire me because of my voice. And I realized
14 that I really, truly do have a problem.

15 Q. Sir, since you applied to Richards Paving
16 and before you got the job with Daisy Construction,
17 how many places did you apply for jobs?

18 A. Good lord, I couldn't even say. If I sat
19 here and gave you a number, I'd be lying to you
20 because I don't remember.

21 Q. Would it have been more than ten? less
22 than ten?

23 A. Oh, my God, yes, because I've been trying
24 to get jobs everywheres.

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1 disability for a while.

2 Q. Anything else?

3 A. Family, friends, church.

4 Q. How much do you get a month for
5 disability?

6 A. I don't remember.

7 Q. Were you on any unemployment during that
8 time?

9 A. I can't remember.

10 Q. Do you have any records that would help
11 your memory?

12 A. No.

13 Q. Do you have any stubs from any of the
14 disability payments or anything?

15 A. No.

16 MR. ABER: I believe what he's talking
17 about is a workers' compensation claim he had, but
18 that was well back before Richards Paving.

19 MR. DONELSON: Sir, I believe those
20 are all the questions I have.

21 THE WITNESS: Thank you.

22 MR. ABER: I have one question.

23 BY MR. ABER:

24 Q. Mr. Burris, I'm going to hand you a copy

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1 other than Mr. Moluski?

2 A. Oh, yeah, I remember, yeah. I remember
3 now, yes. The secretary -- I retake it back. She
4 did say that I talked on the CB and that she could
5 understood -- understand what I said. I remember
6 that now.

7 MR. ABER: Thank you. I have nothing
8 else. We'll read and sign.

9 MR. DONELSON: I'm just going to
10 redirect. I'm --

11 MR. ABER: Sorry.

12 THE WITNESS: It's my fault.

13 BY MR. DONELSON:

14 Q. Sir, I'm just trying to clarify this. You
15 just testified to your attorney's questions that you
16 don't remember talking on the CB but you remember
17 having a conversation with the receptionist.

18 Is that your testimony?

19 A. Yeah. After I, after I reviewed the
20 records, because it's been since 2003. I mean, there
21 has been so many other problems I've had: losing my
22 property, everything being taken away.

23 It's kind of hard to remember
24 something that happened, what, three years ago? I am

Stanford L. Burris

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1 A. If the statement said I did, I did. I
2 just don't remember; that's all. But I do remember
3 it, having a conversation with the secretary now.

4 Q. Okay. What did you say on the CB, if
5 you --

6 A. I don't remember.

7 Q. Who did you speak to on the CB?

8 A. The girl in the office. It had to be
9 because we, we always called back to the base.

10 Q. Well, on the second day, where were you
11 calling from that you were trying to reach the girl
12 in the reception area?

13 A. I went into the office -- to make -- to be
14 honest with you, since we read the thing, I was at,
15 at Richards Paving now more than twice because I
16 went, because -- as I'm refreshed now, the girl did
17 tell me to come back. She gave me the application.
18 I brought the application in, I believe. That's when
19 I had the interview with a Dave or David.

20 Q. I understand that. We're talking about
21 the second day where you said you went back with the
22 driving record --

23 A. Second day was all I did was give him the
24 driving record; that's when he said he couldn't use

1 64 years old. My memory's not as good as it used to
2 be.

3 Q. Where was the CB that you were speaking
4 from.

5 A. I don't remember exactly where. But it
6 wasn't in the truck when we took the road test. I
7 remember that. Because it wasn't -- I don't remember
8 a CB being in the, in the truck.

9 Q. And we're referring to the second day,
10 because you've already testified that you didn't use
11 the CB on the first day. We're referring to the
12 second day. My question is, where did you use a CB
13 on the second day?

14 A. I don't think I used a CB on the second
15 day. That's when I was told to bring a copy of my
16 driving record back, which I did.

17 Q. And just so I'm clear, is it your
18 testimony that on the first or second day, you didn't
19 use a CB on either day?

20 A. I remember after, after I saw the -- I
21 said I did. So I guess I did.

22 Q. Well, I'm not asking you if you guess you
23 did. I'm asking you if your recollection says you
24 did.

1 me because of the voice.

2 Q. And the second day, you didn't use a CB on
3 the second day; is that correct?

4 A. Not that I remember. I think this was all
5 the first day, I believe.

6 Q. The first day, now, your testimony now is
7 that the first day you used a CB?

8 A. That's when I think I used it because when
9 I gave him the driving record, he said he couldn't,
10 he couldn't use me. He could have told me that
11 before I gave him the record; I'm not sure.

12 Q. I apologize if I keep asking you the same
13 questions, because I'm just trying to make sure this
14 is clear, because it's starting to get muddled up for
15 me.

16 The first day, you've already
17 testified that there was no CB in the truck. So
18 where would you have used the CB on the first day?

19 A. I'm saying the truck that I was -- that he
20 road-tested me in. It wasn't the same truck that I
21 used the CB in. Because I think the truck that I had
22 used, he had said something about it had been to the
23 shop and the accelerator was sticking or something.
24 They had been working on it. The next day -- I

1 BY MR. ABER:

2 Q. You can answer.

3 MR. ABER: Go ahead.

4 THE WITNESS: It was in the yard. It
5 was in the yard, because I didn't drive the second
6 day.

7 BY MR. ABER:

8 Q. And was Mr. Moluski with you at that time?

9 A. Yes, he -- yes, he was. I mean, it's kind
10 of hard to sit here and tell you the exact day,
11 everything that happened that day because that was a
12 confusing time. And I do remember after bringing the
13 application back, I didn't review that. I should
14 have reviewed some of the stuff before I came.

15 Q. Did Mr. Moluski ask you to talk on the CB
16 on that first day?

17 A. That was the only reason why I would be on
18 it, if he told me to do it.

19 Q. And who did he ask you to contact?

20 A. I don't remember who he said. All I --
21 most times if you call on the CB, it's either to the
22 base or to another driver. I think it was at the
23 base because the secretary said she understood what I
24 said.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)
)
Plaintiffs,)
) Civil Action
v.) No. 04-1469 (SLR)
)
RICHARDS PAVING, INC.,)
)
Defendant.)

Deposition of DAVID MOLUSKI taken pursuant to notice at the law offices of Aber, Goldlust, Baker & Over, 702 King Street, Suite 600, Wilmington, Delaware, beginning at 2:00 p.m. on Wednesday, June 14, 2006, before Lucinda M. Reeder, Registered Diplomate Reporter and Notary Public.

APPEARANCES:

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1 Q. Did you do an interview of him?

2 A. I took him for a road test.

3 Q. That was not my question.

4 A. I'm sorry. Yes, I did do a interview.

5 Q. What was the nature of the interview? What
6 kind of questions do you ask during the interview?

7 A. Basically, he came in. I can't remember
8 exactly. But I can tell you what I go through with
9 everyone. Is that okay?

10 Q. Okay.

11 A. I ask them to come in, bring a copy of their
12 driving record. Then I take them for a road test
13 consisting of: We leave the parking lot. They have
14 to do a pretrip on the truck. I stand there and watch
15 them do their pretrip. We get in the truck. We drive
16 out the parking lot, up 141. We go towards 95.
17 Circle around the ramp, come back down and pull back
18 into the parking lot.

19 Q. It sounds like a fairly simple route.

20 A. Yeah. It's about five miles is what we do.

21 Q. Did you do any interviewing asking questions to
22 get answers from him, any verbal --

23 A. We spoke. Just, basically, you know, where he
24 had -- what experience, you know, general stuff like,



1 you know, where did you work, you know, and then, you
2 know, why didn't you work why did you quit there, and
3 that sort of thing.

4 Q. What is your impression of his experience?

5 A. He told me that he worked, I think for -- it's
6 hard for me to remember. Experience, you know,
7 well -- until -- the reason I take them on a driving
8 test is because what people tell me rarely backs up
9 what they actually do. I get a lot of people that
10 tell me they can drive any truck -- they drove, can
11 operate any piece of equipment. And they will come to
12 me and say, I've operated all sorts of equipment; I
13 can drive all sorts of machinery; I did this for so
14 and so. They'll give names. Rarely does it pan out
15 that they actually can back up what they say they can
16 do. So that's why I take them on driving tests. We
17 take operators out. We take them out in the field and
18 put them on a piece of equipment, that sort of thing.

19 Q. Before you took him for a road test, did he
20 describe his experience as a truck driver?

21 A. I can't remember exactly, but we probably
22 chatted about that, you know.

23 Q. Did you derive an impression of his experience
24 before you -- did you derive any feeling for his



1 | Bellecor.

2 Q. When you got back into the yard, you said you
3 didn't tell him whether he passed or failed the
4 driving test?

5 A. That is correct.

6 Q. What did you tell him about his driving?

7 A. I can't remember word for word. Generally, I
8 tell them I'll get back to them on it.

9 Q. Did you tell him you have to talk to somebody
10 else?

11 A. Generally -- well, I have to clear all new
12 hires between -- before I hire somebody, I have to get
13 approval from either Jeff or Richard, so. Generally,
14 what I tell somebody is I will get back to them; I'll
15 let them.

16 Q. Did you discuss the driving test with either
17 Jeff or Richard?

18 A. I did not.

19 (Moluski Deposition Exhibit No. 1 was
20 marked for identification.)

21 BY MR. ABER:

22 Q. I am handing you some documents which are
23 called the -- well, they're titled "Plaintiff's First
24 Set of Interrogatories Directed to Defendant, but

1 plaintiff was advised ..." Do you see it? Turn to
2 the page where there is one question -- do you see the
3 numbers of the questions?

4 A. Yes. I am looking at -- you said 13, correct,
5 right here?

6 Q. Yeah. Turn to the next page. Your answer to
7 the question is on the next page.

8 A. Okay.

9 Q. It is sort of italicized language.

10 A. Okay.

11 Q. Skip the sentence that says, "By way of further
12 response." Count up four lines from the bottom. In
13 the middle of that line there is language "Rather,
14 plaintiff was advised ..." do you see that?

15 A. Okay.

16 Q. The answer to that interrogatory states,
17 "Rather, plaintiff was advised on or about May 5th,
18 2003 that Mr. Moluski had to speak to his supervisor
19 before any decision could be made."

20 A. Correct.

21 Q. Is that a true statement?

22 A. Yeah. That's a true statement.

23 Q. You told Mr. Burris that you had to speak to
24 your supervisors?



1 A. That I have to run everything through Jeff and
2 Richard, yeah.

3 Q. But that was not a true statement, was it?

4 A. If I am going to hire somebody, I have to speak
5 to them. That is what I do.

6 Q. You didn't say there "in order to hire him";
7 you just said -- that statement says that you advised
8 Mr. Burris, the plaintiff, that you had to speak to
9 the supervisor before any decision could be made, not
10 a decision on hiring, but before any decision?

11 A. This was several years ago. I can't remember
12 my exact words on everything, so.

13 Q. What I am trying to determine is the decision
14 not to hire him, you did not discuss that with anybody
15 else?

16 A. I don't believe I did, no.

17 Q. So that was your decision alone?

18 A. Not to hire him?

19 Q. Yes.

20 A. Yes. Because he could not handle the truck.
21 If somebody tears up a truck, then -- you know.

22 Q. But the statement in answer to that
23 interrogatory is you had to speak to your superiors
24 before any decision was made is not an accurate



1 do I have to speak to them.

2 Q. So that statement is not accurate if it means
3 any decision?

4 A. That is correct.

5 Q. Okay. Now, what explanation did you want to
6 give me?

7 A. Normally -- a lot of times when we have truck
8 drivers that insist they can drive and they can't
9 handle a dump truck, they have gotten violent,
10 screamed at me, told me they can drive a truck, called
11 me mother-fucker, all sorts of different things. So I
12 have learned through the years to tell somebody that
13 be they're bad at something is mean. So, basically,
14 what I tell them -- if they're a bad driver, I will
15 just tell them I can't -- I have to go talk to
16 somebody about it before I can make a decision. So
17 that alleviates any conflict with them, so that there
18 is no -- but they generally know. They have a feeling
19 when they've driven poorly. You know, they don't --

20 Q. Prior to Mr. Burris filing a charge of
21 discrimination against you, did you ever discuss with
22 either -- what's Jeff's last name?

23 A. Thompson.

24 Q. Jeff Thompson or Richard -- Mr. Richard's last



1 A. I never spoke with him over a CB.

2 Q. That was not my question. Listen to my
3 question.

4 A. Okay. I'm trying to.

5 Q. Did you test him to see whether he could be
6 understood on a CB or cell phone at any time?

7 A. I did not test him, no.

8 Q. Did you ask him to speak to anybody on a CB or
9 a cell phone?

10 A. Did I -- I don't remember if -- I don't believe
11 so, no. I can't remember. I know he ... I don't
12 really know on that one.

13 Q. After -- since the time that Mr. Burris took
14 the driving test, up until today, have you or anybody
15 at your direction ever contacted his former employers?

16 A. I have never done that. I cannot speak for
17 anybody else. Not at my direction nobody has. I have
18 not asked anybody to.

19 Q. Do you have knowledge of anybody who has done
20 that?

21 A. No, I do not.

22 Q. Now, when you discussed the reasons that
23 Mr. Burris was not hired, you discussed it with
24 Jeff -- what was his name? Do you have a last name?

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1 give you an actual number.

2 Q. Approximately.

3 A. It floats up and down. But I would say
4 probably in a year, a hundred, 150, somewhere in that
5 range.

6 Q. So since 2003, you have had about five to 600
7 people apply for jobs?

8 A. Yeah. Some of them -- yeah, I'd say -- we run
9 from ads from time to time, you know.

10 Q. Of those five to 600 people, how many get road
11 tests?

12 A. We try -- anybody who wants to take one, takes
13 one, so-

14 Q. Let's take the 150-a-year number you gave me.
15 Of the 150 people who apply each year, how many do you
16 road-test?

17 MR. DONELSON: Are you talking about truck
18 drivers?

19 Q. Yeah, truck-drivers.

20 A. I road-test all truck-drivers before we fill
21 out their paperwork. Before we even go through with
22 the DOT application, we take them for a test drive to
23 see if it's worth going any further.

24 Q. So in the year 2005, you did about 150 road



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1 on the crews other than truck driver since he applied?

2 A. Oh, yeah.

3 Q. Did you ever try and contact him and offer him
4 another job?

5 A. For?

6 Q. As a laborer.

7 A. No, I did not.

8 Q. What records do you have of his application?

9 A. I don't believe we have any left. I throw them
10 out when they fail.

11 Q. So there is no written record of his
12 application whatsoever?

13 A. As far as I know, there is no written record.

14 Q. So for determining what happened that day and
15 the reason he was not hired, it's based solely upon
16 your memory; correct?

17 A. Correct.

18 Q. If your memory is wrong, then what you have
19 answered in the interrogatories is wrong?

20 MR. DONELSON: Objection.

21 Q. Did you tell Jeff -- I keep forget his last
22 name?

23 A. Thompson.

24 Q. -- Thompson that the reason Mr. Burris was not



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1 hired was that he flunked the road test?

2 A. That is correct. He did not pass his road
3 test. That's why he was not --

4 Q. Did you tell Mr. Thompson there was any other
5 reason that he was not hired?

6 A. No.

7 Q. It's your testimony today, to the best of your
8 recollection, Mr. Burris was never tested on either a
9 CB radio or cell phone as a part of his application
10 process?

11 A. That is correct. I never spoke to him on a
12 CB --

13 Q. I didn't ask whether you spoke to him.

14 A. I did not test. I will say that. I did not
15 test him on a CB radio or a cell phone.

16 Q. Is there anybody else who would have conducted
17 that type of test?

18 A. Not that I know of.

19 Q. Is it possible Mr. Thompson might have called
20 him back for a second interview?

21 A. No. Jeff would not have called him back unless
22 I asked Jeff to do that.

23 MR. ABER: All right. I have no other
24 questions. Thank you.



1 I don't know at the time that Mr. Burris called,
2 whether he called me on my cell phone or he called
3 into the office and I was at my desk or they got ahold
4 of me and I said, yeah, bring him in for a test.

5 Q. Do you have any recollection of having any
6 difficulty understanding him if he called you on a
7 cell phone?

8 MR. DONELSON: Objection. He just says he
9 doesn't remember if he spoke to him.

10 MR. ABER: If you want to object, object.
11 If I want the reason, I'll ask for it. I don't want
12 speaking objections.

13 Would you read my question back, please?

14 (The reporter read as requested.)

15 THE WITNESS: I don't remember talking to
16 him on a cell phone.

17 BY MR. ABER:

18 Q. At any time when you met him and talked to him,
19 did you have any difficulty understanding him?

20 A. You had to listen closely when he spoke. I
21 don't know if you would consider that difficult. But
22 you had to listen closely because his voice was very
23 soft.

24 MR. ABER: I have no other questions.



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

STANFORD L. BURRIS,)
v. Plaintiff,)) Civil Action
RICHARDS PAVING,)) No. 04-1469
Defendant.))

Deposition of JEFFREY THOMPSON taken pursuant to notice at the law offices of Aber, Goldlust, Baker & Over, 702 King Street, Wilmington, Delaware, beginning at 2:30 p.m. on Wednesday, July 19, 2006, before Eleanor J. Schwandt, Registered Merit Reporter and Notary Public.

APPEARANCES:

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MATTHEW P. DONELSON, ESQ.
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1 not done. In the same respect, let me finish my question
2 before you jump in with an answer. All right?

3 A. Yes.

4 Q. Okay. By whom are you employed?

5 A. Richards Paving, Inc.

6 Q. In what capacity?

7 A. I am the president.

8 Q. And how long have you held that position?

9 A. Two years.

10 MR. ABER: Off the record.

11 (Discussion off the record.)

12 Q. How long have you been employed by Richards
13 Paving?

14 A. Approximately 16 years.

15 Q. And was that your family business before you got
16 into it?

17 A. No.

18 Q. You started the company?

19 A. No.

20 Q. Did you buy it from somebody?

21 A. No.

22 Q. What is the alternative? How did you get it?

23 Give me a third alternative.

24 A. I was hired by the owner.

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1 A. I didn't know I needed to bring it.

2 Q. Okay. Do they still exist?

3 A. I don't know.

4 Q. Would you have just destroyed them?

5 A. I may have. I'm not even sure how old this case
6 is. Is it three years old. I really don't know.

7 Q. The Department of Labor made its findings on
8 April 30th, 2004.

9 A. So it is more than two years old.

10 Q. A little over two years, yes.

11 A. I don't know if I still have anything or not.
12 Again, everything was very informal, as they had notified
13 me.

14 Q. Mr. Burris made an allegation of discrimination
15 against your department. You understand that?

16 A. Yes.

17 Q. And the Department of Labor contacted you, both
18 verbally and I guess in writing, wanting to know your
19 version of why he wasn't hired?

20 A. Yes.

21 Q. What did you tell them?

22 A. I told them that I did not know. In fact, I did
23 not even know who he was.

24 Q. So you provided them no information?

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1 A. That is correct.

2 Q. And nobody else from your company provided them
3 any information?

4 A. Well, no. I need to expand on that. During this
5 phone call prior to receiving a written letter, I was
6 told that I would be getting a letter, I needed to be
7 aware of what this was, what was happening, and I would
8 need to respond to it on an informal basis.

9 Q. Did you respond to it?

10 A. I did. And I was told that in my response I
11 needed to explain what had happened. I didn't know what
12 had happened. I told them I did not know what had
13 happened.

14 Q. Okay.

15 A. And I was told to make sure I fleshed out my
16 response, to do it on an informal basis, and that that
17 would be the end of it.

18 Q. Did you write a response?

19 A. I did.

20 Q. Before you wrote the response did you consult
21 with anybody?

22 A. No, I did not. Again, there was no need to, as
23 far as I knew, because this was done informally. I
24 didn't even know who Mr. Burris was at that time.



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1 Q. You understood he was making a charge of
2 discrimination for not being hired?

3 A. Correct.

4 Q. And you didn't know who he was from Adam?

5 A. Correct.

6 Q. And you were going to have to explain to the
7 Department of Labor your company's position as to why he
8 was not hired?

9 A. On an informal basis, yes.

10 Q. Well, informal, formal, it doesn't matter?

11 A. It makes a very big difference, if I may disagree
12 with you. That's a very, very big difference.

13 Q. What is the difference?

14 A. On an informal --

15 Q. You would tell the truth in either case, wouldn't
16 you, whether it was formal or informal?

17 A. I would tell the truth. But on a informal,
18 casual basis, there is a very big distinction between how
19 you are going to address an issue and whether that issue
20 is going to be used at a future date.

21 Q. What is the difference? Explain to me. Because
22 to me, if somebody makes an inquiry, you tell them the
23 truth. You can do it informally or you can do it
24 formally, but the content of the response would be the



1 truth in either case. Would you agree with that?

2 A. I believe, Mr. Aber, you made the perfect example
3 I would use right here when you asked to speak off the
4 record and asked about a paving inquiry.

5 Q. Well --

6 A. If you allow me to finish, that was a perfect
7 example I would use, speaking off the record is exactly
8 what happened in this case.

9 Q. When you speak off the record do you not tell the
10 truth?

11 A. When I speak off the record do I not tell the
12 truth?

13 MR. DONELSON: Object to form.

14 Q. Let me rephrase it. When you speak to someone
15 off the record do you lie?

16 A. No, I do not lie.

17 Q. When you speak off the record do you tell the
18 truth?

19 A. If I understand the facts, yes. If I understand
20 the facts.

21 Q. When you speak off the record do you make up
22 things out of your imagination?

23 A. I can.

24 Q. Would you have made up a reason for his

1 tell me that DelDOT is awful, I forget the exact word you
2 used, but you wouldn't tell me that unless you really
3 thought there was some problems with DelDOT, would you?

4 A. Now I'm confused.

5 Q. So am I. That makes two of us, and I think I'm
6 more confused than you. I'm trying to understand that
7 when you are talking off the record, do you tell the
8 truth or do you make things up?

9 A. I think we can address your question more
10 specifically by getting to the point of what I believe
11 you are asking.

12 Q. I'll get to my point. I'm asking you to answer
13 my question. When you talk to somebody off the record
14 and tell them something, are you telling the truth or are
15 you lying to them?

16 A. At any time, in any situation, in any
17 circumstance in my entire life?

18 Q. Let me put it to you this way: When you talk
19 to a government agency, the State of Delaware, would you
20 lie to them?

21 A. At any time, under any condition, under any
22 circumstance?

23 Q. Yes.

24 A. I might.



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1 Q. You realize that might be construed as perjury?

2 A. Not if I have been told that it is informal and
3 not if I have been told it will be kept in strictest
4 confidence between two individuals and they are not
5 acting as a government agent in this respect.

6 Q. Would you have lied to the Department of Labor?

7 A. If I were told that it is informal and it would
8 be kept in the strictest of confidence and they are not
9 acting as a government employee at this time, I may have,
10 I may have -- no, I would not have lied, no. I would not
11 have lied.

12 I would have, I would have followed their
13 instructions and have tried to present information to
14 them that would have put my company in the best of light.

15 Q. Did anybody at the Delaware Department of Labor
16 ever inform you that you were talking off the record and
17 it would never be repeated?

18 A. Yes.

19 Q. Who told you that?

20 A. I do not remember the person's name.

21 Q. Does Melinda Sheldon sound correct to you?

22 A. Melinda Sheldon I believe is the person to whom I
23 addressed the letter, but I do not believe that is the
24 person to whom I spoke to initially.

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1 Q. When you wrote, when you addressed the letter to
2 Melinda Sheldon, were you speaking informally or
3 formally?

4 A. I don't know. That was simply a person I was
5 told to address the letter to.

6 Q. Were you telling the truth in that letter?

7 A. I don't know.

8 Q. You might have lied in the letter to the
9 Department of Labor?

10 A. I don't know. This was --

11 Q. When you learned, when you were contacted by the
12 Department of Labor, and the Department of Labor told you
13 that Mr. Burris had filed a claim of discrimination
14 against your company, you told me originally you didn't
15 know him from Adam, correct?

16 A. Right.

17 Q. By the time you had responded in writing to the
18 Department of Labor, had you made inquiries about who he
19 was to find out what the whole story was?

20 A. No.

21 Q. So when you responded to the Department of Labor
22 you had no knowledge of who Stanford Burris was?

23 A. That is correct.

24 Q. Did you know whether he was black or white?



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1 A. No.

2 Q. Did you know whether he was short or fat?

3 A. No.

4 Q. Did you know if he had any disabilities?

5 A. No.

6 (Thompson Deposition Exhibit 1 was marked
7 for identification.)

8 THE WITNESS: Is that the same thing?

9 BY MR. ABER:

10 Q. Yes. Give that to your lawyer. Do you recognize
11 the document that's been marked Thompson 1?

12 A. No, I do not.

13 Q. This is the official findings of the Department
14 of Labor. Now, let me explain some terminology to you.
15 In this you will see the terms the "Department of Labor,"
16 that's the Department of Labor who got the complaint.

17 You will see the term "charging party,"
18 that means Mr. Burris because he filed the charge.

19 You will also see the term "respondent,"
20 Richards Paving, Inc. is the respondent.

21 Do you understand that?

22 A. Mm-hmm.

23 Q. Let's go through the document. The document says
24 that on May 9th Mr. Burris filed a charge of



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1 discrimination against Richards Paving, Inc.

2 Do you have any reason to doubt that?

3 A. No.

4 Q. Okay. Under "Reasonable Cause Findings" it
5 states, "On April 30th, 2004, the Department of Labor
6 concluded its investigation and now finds, based on the
7 following facts, that there is reasonable cause to
8 believe that a violation of the State Discrimination Act
9 has occurred."

10 That's their thoughts. You don't have to
11 speak to that.

12 Under Roman Numeral I it lists "Undisputed
13 Facts." The first undisputed fact is, "Charging Party
14 applied for a Truck Driver position with Respondent on or
15 about April 3rd, 2003."

16 Do you understand what that sentence means?

17 A. Yes.

18 Q. Do you have any reason to disagree with it?

19 A. I don't know whether he did or did not.

20 Q. Well, the second sentence under "Undisputed
21 Facts," Roman Numeral I states, "Respondent had an
22 interview with Charging Party where the interviewer and
23 Charging Party attempted to communicate using both a CB
24 radio and a cell phone in an attempt to find a reasonable



1 accommodation to Charging Party's disability."

2 Do you understand that sentence?

3 A. I understand what it says.

4 Q. Do you have any reason to believe that is a false
5 statement?

6 A. I don't know whether he did or he didn't.

7 Q. You don't know one way or the other?

8 A. That's correct.

9 Q. Thirdly, "Respondent did not hire Charging Party
10 for this position."

11 Do you understand what that means?

12 A. Yes.

13 Q. Do you have any reason to agree or disagree with
14 that?

15 A. I, I now know he was not hired. I did not know
16 it at the time.

17 Q. Did you ever discuss Mr. Burris with Mr. Moluski?

18 A. Not, not concurrent with the case. Only now.

19 Q. Now, the second, Roman Numeral II is "Disputed
20 Facts," that means that there is a dispute between what
21 the charging party, Mr. Burris said, and with what the
22 respondent, Richards Paving says. Do you understand?

23 A. Yes.

24 Q. The sentence one under Roman Numeral II states,

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1 "Charging Party states that the representative of
2 Respondent stated Charging Party was not being hired
3 because of his voice."

4 Do you understand that sentence?

5 A. Yes.

6 Q. Do you have any reason to agree or disagree with
7 that?

8 A. I don't know.

9 Q. The next sentence says, "Respondent," meaning
10 Richards Paving, "Respondent further stated that Charging
11 Party could not be heard over the CB radio and therefore
12 could not be hired as a Truck Driver."

13 Do you understand that sentence?

14 A. Yes.

15 Q. Do you have any reason to agree or disagree with
16 it?

17 A. I don't know.

18 Q. Okay. Now, this is my question: You are the
19 only person from Richards Paving that you know of who has
20 communicated with the Department of Labor?

21 A. Yes.

22 Q. Where would the Department of Labor have gotten
23 that position, that statement made by Richards Paving?

24 A. If someone else from Richards Paving responded to



1 them that I don't know of, or --

2 Q. Did you --

3 A. Okay. Or from the letter that I submitted to the
4 Department of Labor, based upon what I was told to do by
5 the individual who initially contacted me.

6 Q. If it is in the letter that you responded by --

7 A. Mm-hmm.

8 Q. -- would you have been telling the truth in that
9 letter about that statement?

10 A. I was told to defend the statements made by Mr.
11 Burris in a matter that would be most effective for
12 Richards Paving, and if I did that, this case would go
13 away.

14 Q. They said it would go away?

15 A. Yes. It was a very informal, off the record
16 matter, and it would go away.

17 Q. So there is a possibility that you stated, on
18 behalf of Richards Paving, that Mr. Burris could not be
19 heard on the CB radio and, therefore, would not be, could
20 not be hired as a truck driver?

21 A. I don't know. I would have to refer to what I,
22 what I said. I don't know.

23 Q. You weren't involved in the interview or testing
24 of Mr. Burris, were you?



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1 informed that this was an off the record, casual response
2 that was designed to make this case really go nowhere.

3 Q. Did you receive a copy of what is marked Thompson
4 1?

5 A. I don't remember it, no.

6 Q. Would it have gone to anybody other than Richards
7 Paving?

8 A. From April 30th, '04? From more than two years
9 ago, I don't remember it. I could have. I don't
10 remember.

11 Q. Just so I understand your testimony, is it your
12 testimony that you made a formal statement, in writing,
13 to the Department of Labor, explaining why Mr. Burris was
14 not hired, and in that response you made up a story that
15 you didn't know was or was not true?

16 MR. DONELSON: Object to the form.

17 A. No, that is not correct.

18 Q. When you wrote to the Department of Labor, an
19 official branch of the State of Delaware government, did
20 you tell the truth?

21 A. When I wrote an informal, off the record letter,
22 under the direction of an employee of the State of
23 Delaware, who guided me as how -- as to how the letter
24 should be addressed and written, I responded in a fashion



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